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Special

February __, 2010

Susan W. Wilson
Chief, Floodplain Management and Insurance Branch
Mitigation Division
U.S. Department of Homeland Security, Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341

Re: Oconee County, South Carolina Floodplain Management Program

Dear Ms. Wilson:

This letter acknowledges receipt of, and is an initial response to your letter, dated December 31, 2009, regarding the above-captioned subject. Through this and future correspondence, we hope to reassure you and the Federal Emergency Management Agency ("FEMA") that Oconee County is making significant strides in its attempt to meet the requirements mandated by Federal law. Our staff has been diligently working to correct any lapses that may have occurred in the past, and we are trying to comply with the current information that FEMA and the State of South Carolina have provided to Oconee County.

Thank you for sending us the records regarding previous Community Assistance Visits. These documents were important for the County to determine what has been requested in the past so that we can fully answer FEMA's questions and concerns. As you may be aware, Oconee County has had significant county administration and governing body transition over the past several years. Moreover, the information in your letter has provided additional clarification as to FEMA's needs.

In an attempt to provide answers to the program deficiencies as set forth in your letter, I will address your list, one issue at a time. Hopefully, some of the information submitted in this letter will provide you with evidence that the corrective actions have been taken, or are in process.

- **Conduct and provide a copy of an inventory of all development that has occurred in the SFHAs in Oconee County since August 15, 1995.**

Please find a copy of the inventory of development in the SFHAs in Oconee County, attached as Exhibit A.

- **Require and maintain copies of permits for all proposed development, including any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. Please provide copies of all permits for development in SFHAs since the date of this CAV.**

Oconee County requires, in accordance with Oconee County Ordinance 2008-21, for proposed development to seek and obtain permits for proposed development. Since August 18, 2008, there have been ten (10) permits issued to properties in the proximity of SFHA's, and only two (2) of those permits were determined to be within an SFHA. A copy of the ten (10) permits are attached as Exhibit B.

- **Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Provide a statement that the County will enforce this provision of its Ordinance.**

Oconee County Ordinance 2008-21, a copy of which is enclosed for your convenient reference, requires that those seeking development permits submit all necessary permits to ensure compliance with Federal or State law. See §16-83 of Ordinance 2008-21. It is our understanding and belief, however, that Oconee County does not have the authority to enforce state or Federal law, *per se*.

Oconee County intends to enforce and comply with all lawfully enacted provisions of its Ordinances, specifically including, without limitation, Ordinance 2008-21.

- **Require, maintain, and submit complete and accurate elevation data on all new and substantially improved structures within SFHAs since August 15, 1995. This includes the signature and professional seal of the surveyor or engineer, who is authorized by the State of South Carolina to certify such information.**
- **Require, maintain, and provide flood-proofing certificates on all new and substantially improved flood-proofed non-residential structures, which have their lowest floor below the County's required elevation within SFHAs since August 15, 1995.**
- **Accurately identify if any development has been placed in a regulatory floodway since August 15, 1995.**
- **Conduct and submit to us any no rise/no impact studies for any proposed or completed development in any regulatory floodway that has occurred since August 15, 1995.**

In response to the above four (4) requests, please find a copy of the inventory of development in the SFHAs in Oconee County, attached as Exhibit A. Oconee County staff is in the process of collecting additional information regarding those properties within the SFHAs and determining the property owners who must be contacted.

- **Require, maintain, and provide complete and accurate records of damage and improvement determinations since August 15, 1995.**

Please find attached all records provided to us by the Oconee County Emergency Management Department, attached as Exhibit C. Oconee County intends to require and maintain complete and accurate records of damage and improvement determinations in accordance with §16-83 of Ordinance 2008-21.

- **Correct the deficiencies that were identified in our review of the County's flood damage prevention ordinance, as specified below, and provide a copy of the revised flood damage prevention ordinance. A revised ordinance was passed on September 1, 2009. This ordinance continues to have deficiencies, which are outlined below and which must be revised.**

By way of further background, a copy of Ordinance 2008-21 (the "Ordinance") was sent to FEMA via email for review and comment. Oconee County did not receive any comments on the proposed Ordinance, so in order to meet the timelines set forth in FEMA's April 9,

2009 letter, the Ordinance went to third reading. Therefore, in order to amend the Ordinance, County Council will have to conduct three readings and a public hearing.

With regard to the deficiencies, Oconee County submits as follows:

➤ **Omitted Citation of Statutory Authority**

To be placed near the beginning of the ordinance: "The Legislature of the State of South Carolina has in South Carolina Code of Laws, Title 4, Chapters 9 (Article 1), 25, and 27, and amendments thereto, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore the (governing body) of Oconee County, South Carolina does ordain as follows:"

There is little doubt that Oconee County has the authority to promote the public health, safety, and general welfare of its citizenry. The Ordinance addresses such authority in the recitals, and the specific references to State authority are also contained in Oconee County's codified ordinances. Even so, the statutory authority language referenced in your letter is problematic. First, the reference to Title 4, Chapter 25 of the South Carolina State Code of Laws does not apply to Oconee County because Oconee County does not have a population over 97,000. Second, Title 4, Chapter 25 of the South Carolina State Code of Laws was repealed by 1994 Act No. 355, § 2, as amended by 1999 Act No. 15, § 1, eff April 30, 1999. As such, the specific language was not included in the recitals or ordaining language. Any guidance you may provide with regard to what relevant language is necessary to meet federal requirements would be helpful.

➤ **Variance section**

All structures must meet the provisions for 44 CFR Section 60.3

The language used for the definition of "Variance" in §16-31 was the definition stated in the model ordinance provided. Please provide additional information as to how this definition may be modified to be in compliance with 44 CFR §60.3. After we receive that information, new language will be drafted and submitted to County Council for their consideration and approval.

➤ **Section 16-38**

Replace "building" with "development" (permits)

New language will be drafted and submitted to County Council for their consideration and approval.

➤ **Section 16 Partial Invalidity and Severability**

Must include: "If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force."

Section 4 of the ordaining language in the Ordinance contains this language.

➤ **Section 16-38**

Ordinance must apply to all new and substantially improved structures since the County joined the NFIP.

New language will be drafted and submitted to County Council for their consideration and approval.

➤ **Section 16-83(a) (second a)**

Note, there are two part (a)'s

This is noted and will be revised as a scrivener's error.

Revise [16-83(a) (second a)] in accordance with 44 CFR Section 60.3(a)(2)

Please provide additional information as to how this section may be modified to be in compliance with 44 CFR §60.3(a)(2). After we receive that information, new language will be drafted and submitted to County Council for their consideration and approval.

➤ **Section 16-122(c)**

Revise to read "new and substantially improved structures", strongly recommend include provision for Executive Order 11988 and that if structures are substantially improved that they be elevated to the 500 year flood level.

New language will be drafted and submitted to County Council for their consideration and approval.

➤ **Section 16-122(l)(6)**

Revise in accordance with 44 CFR Section 60.39(d)(3)

After some research, we could not determine where any part of 44 CFR §60.39 applied to §16-122(l)(6). Inasmuch as the reference was to 44 CFR §60.3(d)(3), please provide additional information as to how this section may be modified to be in compliance with 44 CFR §60.3(d)(3). After we receive that information, new language will be drafted and submitted to County Council for their consideration and approval.

With regard to the potential violations as stated in your letter, Oconee County submitted information regarding the listed properties on August 31, 2009. Attached as Exhibit D, please find additional information regarding those properties. Based on this information, Oconee County submits that the listed properties are duplicates of other listed properties, non-existent properties, properties outside of Oconee County's jurisdiction, properties that already have elevation certificates, or properties that do not require elevation certificates.

As stated above, Oconee County intends to resolve any remaining program deficiencies in its flood plain management program and will try to ensure all violations of the Ordinance are remedied to the maximum extent possible in order to meet the requirements set forth by FEMA and Federal law. Oconee County has made necessary changes to development reviews to ensure compliance with the Federal Flood Insurance Program and is currently working on obtaining

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elevation certificates on those properties identified in the 1995 inventory, see Appendix A. Any assistance or cooperation you can provide in this regard will be appreciated and very helpful in moving forward.

Thank you for your interest in Oconee County and its matters. We are looking forward to hearing your response. If I may be of further assistance, please advise.

Regards,